



E 572-1
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

C.H. Powell Company
One Intercontinental Way
Peabody, Massachusetts 01960

Attention: Paul Powell
President

Dear Mr. Powell:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, C.H. Powell Company (Powell) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act).²

¹ The alleged violations occurred during 1994 and 1995. The Regulations governing the violations at issue are found in the 1994 and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 and 1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this charging letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices on August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and again on August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997) continued the Regulations in effect under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



Facts constituting violations:

Charges 1-4

As is described in greater detail in Schedule A, which is attached hereto and incorporated herein by reference, on four separate occasions between on or about January 6, 1994 and on or about July 7, 1995, Powell, acting as the freight forwarder with respect to the relevant shipments, prepared and used Shipper's Export Declarations or air waybills, or both, export control documents as defined in Section 770.2 of the former Regulations,³ for the purpose of effecting exports from the United States to Peru, Venezuela and Guatemala, representing that sodium cyanide qualified for such export under general license G-DEST. In fact, none of the exports were authorized under general license G-DEST, but each required a validated license. By making false or misleading statements of material fact, directly or indirectly to a United States government agency in connection with the preparation or use of export control documents, Powell violated Section 787.5(a)(1) of the former Regulations in connection with each of the four shipments, for a total of four violations.

Accordingly, Powell is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Powell fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

³ Between July 1, 1994 and July 5, 1994, and between August 20, 1994 and July 7, 1995, the former Regulations were continued in effect by Executive Order issued pursuant to IEEPA.

Powell is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Powell's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Powell's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

SCHEDULE A

C.H. POWELL COMPANY

CHARGE No.	DATE	DESTINATION	BOOKING/ DOCUMENT No.	EXPORT REFERENCE/ INVOICE No.
1.	01/06/94	Peru	716351	L-872834
2.	04/25/94	Venezuela	0410CP	D-892052
3.	05/15/95	Venezuela	0420CP	D-892659
4.	07/07/95	Guatemala	JERSTS5260002	F-892816

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
C.H. POWELL COMPANY)
One Intercontinental Way)
Peabody, Massachusetts 01960,)
)
<u>Respondent</u>)

SETTLEMENT AGREEMENT

This Agreement is made by and between C.H. Powell Company (Powell) and the Bureau of Export Administration, United States Department of Commerce (BXA), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act).²

Whereas, the Office of Export Enforcement, BXA, has notified Powell of its intention to initiate an administrative proceeding against it pursuant to the Act and the Regulations,

¹ The alleged violations occurred during 1994 and 1995. The Regulations governing the violations at issue are found in the 1994 and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 and 1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this Settlement Agreement.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629 (August 15, 1997)) continued the Regulations in effect under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

based on allegations that, between on or about January 6, 1994 and on or about July 7, 1995,³ Powell made false or misleading statements of material fact directly or indirectly to a United States government agency in connection with the preparation or use of Shipper's Export Declarations, when it stated that sodium cyanide qualified for export from the United States to Peru, Venezuela and Guatamala under general license G-DEST, in violation of Section 787.5(a)(1) of the former Regulations;

Whereas, Powell has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the proposed Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed:

Whereas, Powell neither admits nor denies the allegations contained in the proposed Charging Letter;

Whereas, Powell wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

Whereas, Powell agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, Powell and BXA agree as follows:

³ Between July 1, 1994 and July 5, 1994, and between August 20, 1994 and July 7, 1995, the former Regulations were continued in effect by Executive Order 12924 issued pursuant to IEEPA.

1. BXA has jurisdiction over Powell, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and Powell agree that the following sanction shall be imposed against Powell in complete settlement of all alleged violations of the Act and the former Regulations arising out of the transactions set forth in the proposed Charging Letter:

- (a) Powell shall be assessed a civil penalty of \$20,000, which shall be paid within 30 days of the date of entry of an appropriate Order;
- (b) As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Powell. Failure to make timely payment of the civil penalty shall result in the denial of all of Powell's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. Powell agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against Powell in connection with any violations of the Act or the Regulations arising out of the transactions identified in the proposed Charging Letter.

5. Powell understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

6. BXA and Powell agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Powell agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

C.H. POWELL COMPANY

BY: Mark D. Menefee
Mark D. Menefee
Acting Director
Office of Export Enforcement

Date: 2/19/98

BY: Charles H. Powell
Charles H. Powell
President

Date: FEB. 13, 1998

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
C.H. POWELL COMPANY)
One Intercontinental Way)
Peabody, Massachusetts 01960,)
)
<u>Respondent</u>)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified C.H. Powell Company (Powell) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),² based on allegations that, between on or

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629 (August 15, 1997)) continued the Regulations in effect under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

² The alleged violations occurred between 1994 and 1995. The Regulations governing the violations at issue are found in the 1994 and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 and 1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this Order.

about January 6, 1994 and on or about July 7, 1995,³ Powell made false or misleading statements of material fact directly or indirectly to a United States government agency in connection with the preparation and use of Shipper's Export Declarations, when it stated that sodium cyanide qualified for export from the United States to Peru, Venezuela and Guatemala under general license G-DEST, in violation of Section 787.5(a)(1) of the former Regulations; and

BXA and Powell having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$20,000 is assessed against Powell, which shall be paid to the United States Department of Commerce within 30 days of the date of this Order.

Payment shall be made in the manner specified in the attached instructions.

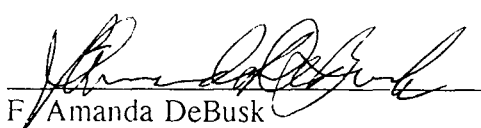
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Powell will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

³ Between July 1, 1994 and July 5, 1994, and between August 20, 1994 and July 7, 1995, the former Regulations were in continued in effect by Executive Order 12924 issued pursuant to IEEPA.

THIRD, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Powell. Accordingly, if Powell should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Powell's export privileges for a period of one year from the date of this Order.

FOURTH, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


F. Amanda DeBusk
Assistant Secretary for Export Enforcement

Entered this 2nd day of March, 1998.

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

E 572-13

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE:
March 2, 1998
www.bxa.doc.gov

CONTACTS: Susan Hofer
Eugene Cottilli
(202) 482-2721

**FREIGHT FORWARDER PAYS PENALTY TO SETTLE CHARGES
OF MAKING FALSE STATEMENTS ON SHIPPING DOCUMENTS**

WASHINGTON -- The Commerce Department today imposed a total of \$30,000 in civil penalties on C.H. Powell Company of Peabody, Mass., for allegedly preparing shipping documents that contained false information and acting with knowledge or reason to know that a violation had occurred, F. Amanda DeBusk, assistant secretary for Export Enforcement announced.

The civil penalties were imposed in two separate cases. In one case, the Department alleged that on four separate occasions C.H. Powell prepared export control documents with false information and used them in connection with exports of sodium cyanide from the United States to Peru, Venezuela and Guatemala. The second case involved allegations that on one occasion C.H. Powell arranged for an exporter to ship sodium cyanide from the United States to the Dominican Republic, knowing or having reason to know that the exporter had failed to obtain the necessary Commerce Department authorization. The Bureau of Export Administration's Boston Field Office investigated the cases.

Commerce's Bureau of Export Administration administers and enforces export controls for reasons of national security, foreign policy, nonproliferation and short supply. Criminal penalties, as well as administrative sanctions, can be imposed for violations of the regulations.